U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: SEP 2 0 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Rachel Ni Iunio
for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, revoked approval of the preference visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently dismissed the appeal. The petitioner filed a motion to reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will be denied.

United States Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part, that "[a] motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider ... must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision."

In this matter, the AAO finds that the petitioner's assertions are not supported by pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law or USCIS policy.

The petitioner is a healthcare recruitment and placement services company. It seeks to employ the beneficiary permanently in the United States as a computer analyst. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which has been approved by the United States Department of Labor (DOL). The director determined that the petitioner had failed to establish that the beneficiary's educational credentials are sufficient to satisfy the educational requirements of the advanced degree professional classification and the educational requirements of the offered position as set forth on the labor certification. The director revoked approval of the petition accordingly. The AAO concurred with the director's decision with respect to this issue and dismissed the appeal.

Although the director determined that the petitioner had failed to establish that the beneficiary met the job experience requirements of five years of progressive work experience before the priority date, the AAO withdrew this part of the director's decision and determined that the petitioner had submitted sufficient evidence to establish the beneficiary's work experience as required on the labor certification.

As set forth in the director's February 22, 2013 revocation, the issue in this case is whether the petitioner has established that the beneficiary possessed all the education, training, and experience requirements as of the priority date as required by the labor certification.

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a

doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec.158 (Acting Reg'l Comm'r 1977). The priority date of the petition is December 8, 2009, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).[1] The Immigrant Petition for Alien Worker (Form I-140) was filed on August 5, 2010.

On motion, the petitioner refers to a decision issued by the AAO on February 2, 2010 and indicates that the holding in the instant matter should mirror the AAO's holding in the 2010 decision where they present similar facts. The petitioner further asserts that the AAO decision indicates that where the evidence shows that the beneficiary received a bachelor's degree from India which was earned in less than four years, and has membership in a professional organization in India such as the this is considered as the equivalent of a U.S. bachelor's degree. The petitioner also asserts that in the instant matter, the evidence shows that the beneficiary has an Indian bachelor's degree and is a member of the Contrary to the petitioner's claims, the facts in the February 2010 case differ from the facts in the instant case in that in the former matter, the labor certification did not require a professional holding an advanced degree or the equivalent of an alien of exceptional ability although the I-140 petition indicated as such. In the instant matter both the labor certification and the I-140 petition require a professional holding an advanced degree.

Here, the petitioner specifically required on the labor certification that the beneficiary possess a bachelor's degree in engineering, computer sciences or business, and that he have 60 months of experience in the job offered. The petitioner indicated that it was willing to accept a foreign educational equivalent. There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States

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[1] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

[2] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

For this classification, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so, would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991). *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

The record of proceeding shows that the beneficiary received a certificate from in recognition of his passing Sections A and B of the institution's examinations in the electrical engineering branch in the winter of 1996 and winter of 2002, respectively. The record also contains a copy of a diploma bestowed upon the beneficiary by the as a result of passing the requisite examination in electrical engineering in 1994. However, the record contains no evidence to demonstrate that this entity is an accredited college or university. It is noted that an examination certificate from a professional association, while comparable to a U.S. degree, is not a degree from a foreign college or university sufficient to meet the labor certification requirements for a beneficiary with an advanced degree.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree.

Furthermore, the petitioner has failed to establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The motion must be dismissed. 8 C.F.R. § 103.5(a)(4).

Finally, the AAO finds that neither the petitioner's assertions nor any evidence in the record of proceeding would overcome the basis for the director's revocation of approval of the petition and the AAO's dismissal on appeal.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reconsider is dismissed and the decision of the AAO dated June 28, 2013 is affirmed. The petition is denied.